

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
2 SKYLINE, 10th FLOOR
5203 LEESBURG PIKE
FALLS CHURCH, VIRGINIA 22041

AUG 5 1986

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDINGS
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. CENT 86-64-M
Petitioner	:	A.C. No. 41-03281-05503
	:	
v.	:	Carter Pit
	:	
D. P. FROST CONSTRUCTION CO.,	:	Docket No. CENT 86-65-M
Respondent	:	A.C. No. 41-02422-05519
	:	
	:	Docket No. CENT 86-66-M
	:	A.C. No. 41-02422-05520
	:	
	:	Yelverton Pit

ORDER APPROVING IN PART AND DENYING IN PART
THE PROPOSED SETTLEMENT AGREEMENT

Before: Judge Broderick

On July 22 and August 4, 1986, the Secretary filed motions to approve settlement agreements in the above cases presently scheduled for hearing (with Docket No. CENT 86-29-M) on September 16, 1986.

Docket No. CENT 86-64-M contains three alleged violations originally assessed at \$689. The parties propose to settle for \$297. Citation 2661194 charged a violation of 30 C.F.R. § 56.11027 because of a sagging work platform with two of eight welds separated. It was assessed at \$168, and the parties propose to settle for \$126 because the area in question is a metal walkway and if it sagged it would contact a flywheel located below it and the resulting sound would have warned of the deteriorated condition of the platform/walkway. In my judgment, the reduction in the penalty is not supported by the motion. Citation 2261195 charged a violation of 30 C.F.R. § 56.15005 because an employee was standing on a conveyor belt shovelling material and was not wearing a safety belt. No handrails were on the belt. It was originally assessed at \$227 and the parties proposed to settle for \$151 because "Defendant states this was an isolated incident . . . there was little or no negligence involved since the violation could not have been reasonably predicted." I conclude again that the proposed reduction is not justified by the motion. Citation 2661196 charged a violation of